Supreme Court, U.S.
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No. OFFICE OF THE CLERK

In the

SUPREME COURT OF THE UNITED STATES

Gilbert Tiffee, Dorothy Tiffee, et. al., on behalf of
Himself and Herself
and All Others Similarly Situated,
&

Mary A. Jasso, et. al., on behalf of Herself,
and All Others Similarly Situated,
Petitioners

v.

Citizens Telecommunications Co, et al.,
Respondents, et. al.

Petition for a Writ of Certiorari to the

United States Court of Appeals

for the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

Gilbert Tiffee,
Dorothy M. Tiffee,
Mary A. Jasso
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Petitioners in Pro Per

QUESTIONS PRESENTED

1. *Whether fraud and perjury of any kind submitted to federal courts to support a defendant's motion for summary judgment, is in violation of Title 18 U.S.C. §1001 and a plaintiff's Constitutional Rights.*

2. *Whether the District Court can foreclose a plaintiff from presenting further evidence of a defendant's breach of duty, on the grounds of collateral estoppel, when California case law states otherwise.*

3. *Whether Congressional Act, federal statute granting right to private action and federal question, can be preempted by the lower federal courts on the grounds of collateral estoppel for a prior state action by that concerned different defendants, state claims and was tainted by fraud an fraud on the courts.*

4. *Whether the lower federal courts were correct to dismiss plaintiffs Mary Jasso and Illa Garcia, on the grounds of collateral estoppel and privity, for a prior state action that the plaintiffs were barred by State Law from participating in.*

5. *Whether a cause of action for ultrahazardous activities can be dismissed by the lower federal courts, when the plaintiffs' injuries and the defendants' activities fall under the umbrella of strict liability for ultrahazardous liability pursuant to §460 of the Calfornia Civil Jury Instructions and past California case law.*

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1. Ninth Circuit Court of Appeals, Mandate, August 10, 2010
2. Ninth Circuit Court of Appeals, Order, August 2, 2010
3. Ninth Circuit Court of Appeals, Memorandum, June 22, 2010
4. United States District Court for the Eastern District of California, Judgment, March 31, 2010.
5. United States District Court for the Eastern District of California, Order, March 31, 2010.
6. United States District Court for the Eastern District of California, Findings and Recommendations, March 11, 2010.

JURISDICTION STATEMENT

The judgment of the Ninth Circuit Court of Appeals was entered on August 12, 2010. The Ninth Circuit denied Appellants Petition for Rehearing, August 02, 2010, This Court has jurisdiction of this matter pursuant to Title 18

§1864(e); Title 28 U.S.C. §1254(1), §1331, §1343(a) and §1357; Title 47 U.S.C. §206, §207, and §505 and Supreme Court Rule 10(a)(c) and 13(1).

STATEMENT OF THE CASE

This case is important, whereas, it brings to this August Court an opportunity to make clear to the lower federal courts that fraud and perjury of any kind submitted to the courts is not acceptable and a crime punishable by Law.

This case is important as it brings an opportunity for this Court to open the gate on toxic RF radiation injuries to humans, albeit at the source. A decision by this court to let this case go forward will insure that the health and safety of the entire Nation comes first and not second to Commerce. The American people should not have to wait three or four decades as they have with DDT, asbestos, benzene, tobacco, Agent Orange and wait until tens of millions of Americans are dead and more than a 100 million have suffered injury before such injury will be admitted by the courts. This Court may well believe, the Appellants' exaggerate the importance of their case. They do not. NASA states that *RF radiation* is *electromagnetic radiation* and the same radiation as *Gamma Rays*, only less intense. The National Library of Medicine declares *RF radiation* to be a *hazardous substance* and a *chronic poison*. John Hopkins estimates there will be 30 million *Alzheimer/dementia* victims by the year 2050, and are trying to discover why? Fifteen out of fifteen of the Likely Mountain radiation victims suffered brain cell death and brain damage. One young victims exposed INUTERO is Autistic. The Appellants in this case are dead, dying and living proof of what damage this type of radiation can do to the human body. What happened at Likely Mountain should not be allowed to be covered by fraud, immunity, preemption, impunity and/or judicial discretion.

The surviving Appellants/plaintiffs were injured on Federal Lands, by the Appellees/defendants radiation emitting devices under Federal Regulation, between the years 1992 through 2002. The Appellants filed suit against these Appellees and also filed a separate suit against State of California defendants under the California Tort Claims Act, in the year 2005, in Superior Court Lassen County, California.

Two of the plaintiffs in the suit against the State defendants, Mary Jasso and Illa Garcia, were dismissed from that suit. Both women had worked for one of the State defendants and so were estopped by State venue Law, from bringing civil suit against the State defendants.

In December 2005, the Appellees removed the Appellants from Superior Court to the District Court, on the grounds the State Court did not have jurisdiction over the federally regulated defendants.

In October 2007, the Superior Court granted the State defendants a final summary judgment order, based on testimony of defendants' employees, Richard Williams and Michael Ensminger. In November 2007, the State of California defendants released the documents they had withheld from discovery and subpoena. Those documents did show the State defendants had committed fraud and fraud on the court to escape liability.

On March 11th 2009, the District Court, despite the Appellants/plaintiffs' protests, granted these Appellees/ defendants summary judgment on the grounds of collateral estoppel [App. Vol. 1. Ex. 4-5, pgs. 4-8], using the same fraudulent documents and statements that had been used in the prior state court action and that had been submitted by the Appellees in this case to support their motion for summary judgment motion in District Court. The plaintiffs protested, but were told by the Court, the type of fraud submitted by the defendants was acceptable fraud.

Theses Appellants/plaintiffs are appealing that decision and for good cause as they feel the District Court's claiming the fraudulent documents and statements submitted to it are allowed by the Court, as it is *intrinsic fraud* and accepted practice in the Courts, is in error. [App. Vol. 1. Ex. pg. 30 ¶1]. The Appellants believe the District Court was incorrect in making such a statement and erred in granting the Appellees summary judgment on that basis. The Ninth Circuit Court of Appeals also errored in Affirming the lower Court's judgment. It is Appellants belief, that fraudulent documents and perjured statements submitted to Federal Courts by any party, are in violation of Federal Law and Constitutional rights, and such fraud, obstructs justice, due process and is a crime.

The Appellants believe it is important this High Court, address the issue of whether fraud and perjury submitted to Federal Courts, that corrupt the judicial process, interferes with due process and violates Constitutional rights of the innocent party are acceptable practice in a Federal Court of Law. (*"The alleged submissions of fraudulent documents and statements by the defendants to the District Court, falls under Title 18 U.S.C. §1001 and such acts are a federal crime. [United States v. Yermian, 468 U.S. 63 (1984)]. (See Note 6)."*

Appellants also need this High Court to address several issues that have arisen in the District Court's granting summary judgment on the ground of collateral estoppel for a prior State court action against different defendants. Those issues include Appellants Questions, two through four.

Question Two, arises from the District Court's foreclosure of any of the plaintiffs' evidence, when the State courts have ruled otherwise in cases involving collateral estoppel.

Question Three, asks this Court whether federal statute granting right to private action and federal ques-

tion, can be preempted by the lower federal courts on the grounds of collateral estoppel for a prior state action, when state and federal case law declare, otherwise.

Question Four asks this Court whether two of the plaintiffs that were barred by State venue Law, from participating in the civil action against the State defendants, can be barred from bringing civil suit in federal court against the Appellees.

Appellants Fifth question, asks this Court to settle the issue of whether the Appellants cause of action for strict liability for ultrahazardous activities can be held against the defendants, when the plaintiffs' injuries and the defendants' activities fall under the umbrella of strict liability for ultrahazardous liability pursuant to §460 of the California Civil Jury Instructions and past California case law

APPELLANT'S AND BACKGROUND and PROCEDURAL HISTORY

Appellants/plaintiffs are in Pro Per, are not attorneys and due to lack of funds they are unable to hire counsel. Appellants would hope this High Court keep that in mind and forgive the construction errors the Appellants are bound to make.

The Appellants/plaintiffs are claiming they were exposed under color of Law, to RF electro/magnetic radiation at the Appellees telecommunications' site at Likely Mountain, Modoc National Forest, California, (Federal Lands leased by the Appellees) and suffered severe bodily harm, death, disabilities and economic loss from the radiation exposure.

The Appellants/plaintiffs filed suit in Lassen County Superior Court of California, in September 2005, against these Appellees/defendants, for their injuries. The Appellees/defendants then removed the case to Federal District Court of Eastern California, December 30, 2005 (D.C.Dkt. No.1), claiming federal jurisdiction and question and

subsequently filed a motion to dismiss plaintiffs Complaint, January 9, 2006. The District Court found plaintiffs' State complaint deficient and gave them leave to amend. The plaintiffs filed their First Amended Complaint in February 2007.

Defendants then filed a motion to dismiss plaintiffs' First Amended Complaint. The District Court denied that motion, July 30, 2007.0

Defendants next filed a motion for summary judgment [D.C. Dkt No. 170]. The District Court granted that motion, March 31, 2009, on the grounds of collateral estoppel.

Appellants then filed an appeal with the Ninth Circuit Court of Appeals, April 24, 2009. The Ninth Circuit denied the Appellants' Appeal on June 22, 2010. and denied Appellants' Petition for Rehearing August 2, 2010. Thus leaving these Appellants with no other recourse, but to come before this High Court and Petition for a Writ of Certiorari.

ARGUMENT

QUESTION 1. *Whether fraud and perjury of any kind submitted to federal courts to support a defendant's motion for summary judgment, is in violation of Title 18 U.S.C. §1001 and a plaintiff's Constitutional Rights.*

District Court Statement 1

> *"[T]he alleged fraud – consisting of 'deliberate, intentional misrepresentations, untruths, half truths, and deceitfully misleading affidavits, arguments and declarations" . . . is clearly what courts have consistently characterized as intrinsic fraud, not extrinsic." Beresh v. Sovereign Life Ins. Co., 92 Cal.App.3d 547, 553 (2d Dist. 1979)."14 Relief is not available in a subsequent proceeding on the basis of intrinsic fraud. Id. "The reason of this*

rule is, that there must be an end of litigation; and when parties have once submitted a matter, or have had the opportunity of submitting it, for investigation and determination, and when they have exhausted every means for reviewing such determination in the same proceeding, it must be regarded as final and conclusive, unless it can be shown that the jurisdiction of the court has been imposed upon, or that the prevailing party, by some extrinsic or collateral fraud, has prevented a fair submission of the controversy." Pico v. Cohn, 91 Cal. 129, 133 (1891).]" [App.Vol.1. pg.30,¶1].

"Accordingly, plaintiffs' allegations of intrinsic fraud do not undermine the substance of the state court decisions." [App.Vol.1. pg.30,¶2].

The District Court, in citing California case Law, rationalizes its use of the same alleged fraudulent statements and documents used by the Superior Court, to grant summary judgment in the prior state case, for its own use in granting the defendants in its Court, summary judgment. The Court tells the plaintiffs that *"deliberate, intentional misrepresentations, untruths, deceitfully misleading affidavits, arguments and declarations,"* are considered *"intrinsic fraud,"* and allowed in its Court Room.

The Appellants believe such judicial findings and summary judgment in favor of the Appellees are in error. For it is the Appellants' belief, false documents and declarations, of any kind, submitted to a Federal Court is outright obstruction of justice, a crime in violation of Title 18 U.S.C. §1001, and in violation of the injured party's Constitutional rights to due process and equal protection of the Laws. Pursuant to the following California case Law, the commission and submisison of fraudulent documents and statements to state and federal courts is not *intrinsic fraud*, at all, but instead, are acts of *extrinsic fraud* and *fraud on the courts*.

"As this court recently noted, "A final judgment may be set aside by a court if it has been established that extrinsic factors have prevented one party to the litigation from presenting his or her case. [Citation.] The grounds for such equitable relief are commonly stated as being extrinsic fraud or mistake. However, those terms are given a broad meaning and tend to encompass almost any set of extrinsic circumstances which deprive a party of a fair adversary hearing. It does not seem to matter if the particular circumstances qualify as fraudulent or mistaken in the strict sense. [Citations.]" In re Marriage of Park (1980) 27 Cal.3d 337, 342 [165 Cal.Rptr. 792, 612 P.2d 882], italics added; In re Marriage of Coffin (1976) 63 Cal.App.3d 139, 149 [133 Cal.Rptr. 583]; Munoz v. Lopez (1969) 275 Cal.App.2d 178, 181 [79 Cal.Rptr. 563].)

Thus, apart from its discretion under section 473, a court has considerable and broad discretion in equity to grant relief from a judgment on a showing of extrinsic fraud or mistake. Under its equitable jurisdiction, then, a court may provide relief in many situations other than those set forth in the statute. fn. 2 For [32 Cal.3d 903] example, courts have long interpreted a party's reliance on a negligent attorney as one kind of "extrinsic mistake" which warrants relief. fn. 3 Hallett v. Slaughter (1943) 22 Cal.2d 552, 556-557 [140 P.2d 3]; Higley v. Bank of Downey (1968) 260 Cal.App.2d 640, 644 [67 Cal.Rptr. 365]; Orange Empire Nat. Bank v. Kirk, supra, 259 Cal. App.2d at pp. 352-354.) Against this back-ground, the trial court's authority to grant equitable relief on the basis of "extrinsic mistake" in this case is clear. ***Carroll v. Abbott Laboratories, Inc., 32 Cal.3d 892. (1982).***

District Court Statement 2

> *"Plaintiffs contend that "about the first week of November 2007," (prior to the November 13 and November 20, 2007 entries of final judgments in the state cases, see Defendants' Exh. G, at Nos. 149, 159), plaintiffs obtained new information demonstrating that the state test results failed to note all frequencies and magnitude of frequencies under the state's control, "including 9 microwave frequencies that were operated during the years 1992-2002." See Opposition, at ¶ 47-52. Plaintiffs reference the handwritten field notes of State Engineer Michael Esminger (Plaintiffs' Exh. 1), the deposition of State Engineer Richard Williams, and hundreds of pages reflecting FCC licenses for Likely Mountain, with extensive technical specifications (Plaintiffs' Exh. 32).*
>
> *As defendants point out, plaintiffs, who were previously represented by counsel, failed timely to raise these matters, assuming their relevance, to the state court. As countered by defendants, "it was not until plaintiffs' counsel withdrew and the State of California defendants moved the state court to assess the costs of the litigation against the Plaintiffs that the Plaintiffs first raised the issue of supposed fraud and perjury in court. [Defendants'] Ex. G (entries 150-164)."*

With all due respect, the District Court has misconstrued the facts as given to it by the defendants. To begin with the State plaintiffs had no knowledge that documents had been withheld by the State defendants or that they had brought false documents and perjured statements into the Superior court. It was only after the State defendants won summary judgment, did they release the *Original Field Notes,* for the radiation level tests conducted by State employees Richard Williams and Michael Ensminger, at Likely Mountain, did the plaintiffs discover fraud had been committed by the state defendants. The plaintiffs then

appealed to the California Third Appellate Court, but due to their lack of funds to hire an attorney[1] and their ignorance of the Law, they filed their Appeal with the title of Writ instead of titling it Appeal. The California Third Appellate and Supreme Court denied review on that basis. The State plaintiffs next filed with the Superior Court, a motion to vacate the judgment pursuant to C.P.C. §473, the only means they could find left to them, at the time, on the grounds the defendants had committed fraud, but the Superior Court, February 19. 2008, stated they were time barred and could not make any more appeals.

---

[1] The State plaintiffs once discovering the fraud committed by the State defendants, did file a motion to vacate the Costs. It should be noted the State defendants did offer to drop the $72.000 in Costs, if the plaintiffs would drop all appeals. The plaintiffs refused. (The State plaintiffs did not learn until recently that they had made a mistake in the title of their Appeal).

> *"Apart from any statutory authority, a court has inherent, equitable power to set aside a judgment on the ground of 'extrinsic fraud or mistake.'" (Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 1997) § 5:435.) The term "extrinsic fraud or mistake" is given a broad interpretation and covers almost any circumstance by which a party is deprived of a fair hearing. (Id. at § 5:438.) There need not be "fraud" in the tort sense of fraud. (Ibid.) "Extrinsic mistake" refers generally to circumstances extrinsic to the litigation that have cost a party a hearing on the merits. (Id. at § 5:449.)"* **No. B114249. – County of Los Angeles v. Warmouth (1998).**
>
> ***"C.P.C. §1916.*** *Any judicial record may be impeached by evidence of a want of jurisdiction in the Court or judicial officer, of collusion between the parties, or of fraud in the party offering the record, in respect to the proceedings."*

A 'fraud on the court" occurs where it can be demonstrated, clearly and convincingly, that a party has sentiently set in motion some unconscionable scheme calculated to interfere with the judicial system's ability impartially to adjudicate a matter by improperly influencing the trier or unfairly hampering the presentation of the opposing party's claim or defense. See, e.g., Alexander v. Robertson, 882 F.2d 421, 424 (9th Cir.1989); Pfizer, Inc. v. International Rectifier Corp., 538 F.2d 180, 195 (8th Cir.1976); England v. Doyle, 281 F.2d 304, 309 (9th Cir.1960); United Business Communications, Inc. v. Racal-Milgo, Inc., 591 F.Supp. 1172, 1186-87 (D.Kan.1984); United States v. ITT Corp., 349 F.Supp. 22, 29 (D.Conn.1972), aff'd mem., 410 U.S. 919, 93 S.Ct. 1363, 35 L.Ed.2d 582 (1973)." **892 F. 2d 1115 - Aoude v. Mobil Oil Corporation. (1989).**

In the United States, only this High Court, has the authority to step in and remind all the courts and all the parties, that fraud of any kind submitted and/or practiced upon a Federal Court of Law, is unacceptable and a crime.

QUESTION 2. *Whether the District Court can foreclose a plaintiff from presenting further evidence of a defendant's breach of duty, on the grounds of collateral estoppel, when California case law states otherwise.*

District Court Statement 3

" 2. Identity of Claims

The controlling issue decided by the Lassen County Superior Court is identical to the central issue in this case, specifically, whether radiofrequency radiation levels on Likely Mountain exceeded federal

maximum permissible exposure ("MPE") standards. Absent some evidence that the duty of care established by the federal MPE standards was breached, plaintiffs are precluded from recovery under 47 U.S.C. § 206, and foreclosed from presenting further evidence in support of their negligence per se claim, viz., causation."

In the above statement, the District Court demands the plaintiffs must show breach of duty and causation, but then declares the plaintiffs are foreclosed from presenting further evidence than what they submitted to the Superior Court, two years earlier for a different group of defendants. By foreclosing the plaintiffs' evidence, any new evidence showing the fraud and fraud on the courts was barred by the District Court. The Court gave Plaintiffs no opportunity or ability, to show the federal defendants breached their duty of care and did so under color of Law.

District Court Statement 4

For the reasons set forth below, this court finds that plaintiffs' claims are barred by collateral estoppel. Since the court does not weigh, de novo, the evidence before it, it need not separately analyze plaintiffs' objections to more than one hundred of defendants' proffered undisputed facts.

*"**No. 59.** At the time of the February 2, 2005 testing, all State radio transmitter equipment (except three microwave transmitters) was turned off and measurements for ambient RF levels were taken."*[App.Vol.1. Ex.6. pg.20].

The District Court when addressing Defendants' *Undisputed Fact No. 59,* to support its contention that the plaintiffs do not have a case, unwittingly, quotes a direct lie given to him by the defendants and their expert witnesses, Richard Williams and Michael Ensminger. The

original field notes or test report for February 2, 2005, the sentence or phrase *"all State radio transmitter equipment (except three microwave transmitters) was turned off),* cannot be found in the original field notes or the test report for February 2, 2005. The original report shows that State engineers, did not take any testing equipment with them to measure any frequency higher than 1.5 Gigahertz which is equal to 1500 Megahertz. [D.C.Dkt.190. Ex.2 pg.9,¶4]. The microwave frequencies at Likely Mountain, are all higher than 1500 Megahertz, running from 1855 Mhz. through 18895 Mhz. [see pages 14-15 this document].

What can be found within the original February 2005, documents authored by Richard Williams, the Appellees/defendants' expert witness, is the following statement;

> *"Personal monitors should also probably be worn by anyone climbing towers or working above ground levels, where they would be placed in the transmission beams with the obvious possibility of exposure to higher RF energy levels."* [D.C.Dkt.No. 190. sec 2. pg.10.¶3].

The above statement made by Mr. Williams to his employer the State of California Department of General Services, [D.C.Dkt.190. Vol.1. sec.2. pgs.8-11], should have been evidence enough for the District Court to take note that the plaintiffs were exposed to higher RF energy levels, i.e., electromagnetic radiation, than Richard Williams and Michael Ensminger claimed. The Court was told that plaintiffs climbed the tower and were at above ground levels for up to 10 or more hours per day.

Plaintiffs do not understand how the lower courts can accept statements made by Mr. Williams and Mr. Ensminger, as evidentiary proof there was no radiation levels that were harmful to plaintiffs at Likely Mountain, while at the same time foreclosing the plaintiffs' right to

use that same evidence to show the fraud and perjury contained within those documents.

District Court Statement 5

"No. 92. State frequencies that were activated for the purpose of making MPE measurements were: 42.08, 42.34, 47.10, 151.415, 153.755, and 858.9875 MHZ."

Plaintiffs submitted to the District Court, federal and state records for active antennae at Likely Mountain, in their Appendix of Exhibits, Section 32, in the same format as the defendants presented their evidence, that show the following frequencies' are in operation at the Mountain and were omitted from the tests conducted by the State engineers.

	Exhibit No.	
1.	Ex. 31-A:	152.750Mhz. (pgs.411-4140).
2.	Ex. 31-A:	153.440Mhz. (pgs.415-421).
3-10	Ex. 31-C:	454.075Mhz.; 454.275 Mhz.; 454,150Mhz.; 454.225Mhz.; 454,457Mhz.; 454,550Mhz.; 454.575Mhz. (pgs.422-428).
11.	Ex. 31-D:	48.020Mhz. (pgs.429-440).
12.	Ex. 31-E:	463.900 Mhz. (pgs.441-450).
13.	Ex. 31-F:	452.175 Mhz. (pgs.451-459).
14.	Ex. 31-G:	6152.800Mhz. MICROWAVE (pgs.460-470).
15.	Ex. 31-H:	6404.000Mhz. MICROWAVE (pgs.471-477).
16.	Ex. 31-I:	6286.190Mhz. MICRWAVE (pgs.478-490).
17.	Ex. 31-J:	18935.000Mhz. MICROWAVE (pgs.491-501).
18.	Ex. 31-K:	955.800 Mhz. (pgs.502-511).
19.	Ex. 31-M:	6345.900 Mhz. MICROWAVE (pgs.512-521)

20.	Ex. 31-N:	6093.450Mhz. MICROWAVE (pgs.522-531).
21-23.	Ex. 31-O:	5945.200Mhz. MICROWAVE 6093.450Mhz. MICROWAVE 6680.625Mhz. MICROWAVE (pgs.532-543).
24.	Ex. 31-R.	468.900Mhz. (pgs.564-569).
25-26.	Ex. 32(A)	151.355Mhz. Fixed Base; 151.355Mhz. Mobile Relay. (pgs.579-582).
27-28.	Ex. 32(C)	75.500Mhz.; 42.920 Mhz. (pgs.589-597).
29-30.	Ex. 32(H)	154.22Mhz. Base; 154.22Mhz. Mobile Relay. (pgs.628-636).
31-32.	Ex. 32(I)	155.700Mhz. Base; 155.700Mhz. Mobile Relay. (pgs.637-645).
33.	Ex. 32(J)	75.100Mhz. (pgs.653-654)
34.	Ex. 32(L)	6765.000Mhz. MICROWAVE. (pgs.664-671).
35.	Ex. 32(M)	6825.000Mhz. MICROWAVE. (pgs.672-678).
36.	Ex. 32(N)	1895.000Mhz. MICROWAVE. (pgs.679-687).
37-44.	Ex. 32(O)	463.000Mhz.; 463.025Mhz.; 463.050Mhz.; 463.750Mhx; 463.100Mhz.; 463.125Mhz.; 463.150Mhz. 463.175Mhz. (pgs.688-712).
45.	Ex. 32(P)	156.165Mhz. (pgs.713-721).
46-47	Ex. 32(Q)	154.875Mhz. Base; 154.875Mhz. Mobile Relay. (pgs.722-731).
48.	Ex. 32(R)	2181.600Mhz. MICROWAVE. (pgs.(738-742).

49.	Ex. 32(S)	6645.000Mhz. MICROWAVE. (pgs.732-737).
50-51.	Ex. 32	160.950Mhz. 160.320 Mhz. (pg.767).
52-53.	Ex 32	1855.000Mhz. MICROWAVE 1875.000Mhz MICROWAVE (pg.767).

[D.C.Dkt.No. 190. Vol.2. sec.31-32. pgs.410-767 and Vol 2. sec. 37. pgs.766-767].

The above information was gathered from copies of Federal licenses and State records that are just some of the frequencies in operation at Likely Mountain.

District Court Statement 6.

"It appears that the controlling issue revolves around and is determined by the fact of whether Radio Frequency Radiation was at a level that could cause plaintiffs' damages. The determination is one of scientific evidence. The scientific and objective tests that have been performed, after the fact, show that the RFR levels were lower than maximum permissible exposure, except for one area by the handrail of the tower, which was at 100% of the maximum permissible exposure, but did not exceed it. As noted by plaintiffs, none of the tests were done at or near the times plaintiffs were present." [App.Vol.1. Ex.6. pg.23].

District Court Statement 7.

"No. 133. When performing direct measurement in order to determine compliance with FCC's RF guidelines, all significant contributors to the ambient RF environment should be considered, including those otherwise excluded from performing routine RF evaluations." [App. Vol. 1. Ex. 6. pg. 20].

By the above statement it is clear the District Court, understands that all the antenna frequency radiation emissions are to be included in the testing process. It is

also clear the Court understands that 100% of MPE radiation level was found at the handrail with one antenna keyed on. What the Court appears not to understand is that the Richard Williams and Michael Ensminger, did not add any other contributing antenna emissions to that 100% radiation level they found at the handrail. The Court also did not consider the two men stated they turned off all the antennas before they climbed the tower. Additionally, the Court also appears not to understand that turning on one antenna at a time and recording its output, is not anywhere near the same level of radiation exposure the plaintiffs were subject to at the Mountain. No one turned off any of the approximately 100 frequencies in use at Likely Mountain, when the Appellants were at the site.

There are material issues of fact that a jury needs to decide after they hear testimony by RF radiation experts on the actual radiation being emitted by all antennas.

There has never been any litigation on the sum of the radiation emissions from the defendants antennae at Likely Mountain. The evidence the District Court is using to dismiss the plaintiffs is based on the emissions of seven frequencies, that do not belong to the defendants and does not include any of the microwave or cellular frequency emissions to be found at the Mountain.

Plaintiffs have stated to the lower federal courts, that RF radiation experts can at trial take the stand and testify as to what actual radiation emissions are being generated at the defendants' antennae. Tests are not needed. The issues are based in science and math and the radiation emissions generated by a frequency is the same from day it becomes active to the day it is deactivated. Such testimony would also show State employees Richard Williams and Michael Ensminger made fraudulent statements and documents for submission to the courts and in doing so committed fraud on the courts.

The use of fraudulent documents and declarations to influence a court's decision, is in violation of the plaintiffs rights to due process and fair litigation and equal protection of the Laws. Therefore collateral estoppel, res judicata and/or Rooker-Feldman defenses are not applicable in this case, or available as a defense for the federal defendants, who came to court with unclean hands and now have used fraudulent declarations, to win summary judgment.

District Court Statement 8.

> *"2 The subsequent evidence relied upon by the state court – particularly as set forth in the declarations of state engineers Richard Williams and Michael Ensminger – was based upon ambient radio-frequency measurements taken in 2005 and 2006, "everywhere a lookout employee might be considered to have normal access," and necessarily included "co-existing, non-State transmitters at each site," Ensminger Decl. at pp. 5-6 (Dckt. No. 170-5, at ¶¶ 20, 21), that is, "RF energy from sources other than State agencies at or around Likely Mountain," Williams Decl. at p. 6 (Dckt. No. 170-6, at ¶¶ 26, 30). The state court also considered the letter written to plaintiffs by FCC District Director Thomas Van-Stavern, which set forth the negative results of FCC testing in 2005, of the areas in which plaintiffs had worked and lived, and involving all com-VanStavern, the tests measured "no RFR levels at the area surveyed exceeding the Commission's MPE limits for public or occupational use." Van Stavern Letter (Dckt. No. 171-2)."* [App.Vol.1. Ex.5. footnote 1, pgs.7-8]. [2]

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[2] It should also be noted that the testing FCC employee Thomas Van Stavern claims the FCC made at Likely Mountain, was 3 and 4 years after the fact and after the State facility had been brought into compliance and fenced off from Public access.

It is the Appellants belief, that in any other Court of Law, in a trial for judgment, where the party was not in pro se, an opposing attorney would be able to object to the introduction of tests conducted three and four years after the fact and the Court would more probable than not grant that objection. It is also the Appellants' belief, that for employees of a defendant, to go three and four years after a crime was committed to the scene of that crime, which had long been cleaned up, — or as in this instance powered down, fenced and warning signs posted — and then come and tell the Court that he found no evidence of the crime, is not evidence, but conjecture and/or cover-up, and has no real basis in fact.

It does not take a legal expert to take a look at what the courts had to say before the commission of the alleged fraud by the State defendants, Mr. Williams and Mr. Ensminger, to see that the fraud obstructed justice and due process. The Superior Court declared before the alleged fraudulent documents and declarations were submitted to it, the following;

> *"3. The demurrer of defendants Department of Forestry and Fire Protection, California Highway Patrol, Department of Fish & Game, and Department of General Services to plaintiff Higinio Jasso's second amended complaint is overruled insofar as the court finds the second amended complaint states facts sufficient to overcome demurrer as to claims premised on Government Code §815.6 and Government Code §835.* **[3]** *The court finds the second amended complaint states facts sufficient to overcome demurrer as to mandatory duty under 8 C.C.R., §8618 and 47 C.F.R., §1.1307(b).*
> *Dated: Aug 24 2006.*
> *s/ Stephen D. Bradbury*

Judge of the Superior Court" [App.Vol.1. Ex.7. pgs. 37-39].

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[3] ***"C.G.C. §815.6.*** *Where a public entity is under a mandatory duty imposed by an enactment that is designed to protect against the risk of a particular kind of injury, the public entity is liable for an injury of that kind proximately caused by its failure to discharge the duty un-less the public entity establishes that it exercised reasonable diligence to discharge the duty.*

*"**C.G.C. §835**. Except as provided by statute, a public entity is liable for injury caused by a dangerous condition of its property if the plaintiff establishes that the property was in a dangerous condition at the time of the injury, that the injury was proximately caused by the dangerous condition, that the dangerous condition created a reasonably forseeable risk of the kind of injury which was incurred, and that either: (a) A negligent or wrongful act or omission of an employee of the public entity within the scope of his employment created the dangerous condition; or (b) The public entity had actual or constructive notice of the dangerous condition under Section 835.2 a sufficient time prior to the injury to have taken measures to protect against the dangerous condition."*

The Federal District Court, declared before the alleged fraudulent documents and declarations made by Richard Williams and Michael Ensminger, were submitted to it.

> *" 2. Defendants' motion to dismiss under the primary jurisdiction doctrine be denied as to plaintiffs' claims for negligence per se and for violations of 47 U.S.C. § 206, and that such claims not be referred to the FCC at this time; and,..."* [D.C.Dkt. No.117. pg.20].

The alleged fraud can be seen to have corrupted the federal court proceedings is extrinsic fraud and summary judgment on the grounds of collateral estoppel, was in error and should not have been granted by the District Court and Affirmed by the Ninth Circuit Court of Appeal.

QUESTION 3: *Whether Congressional Act, federal statute granting right to private action and federal question, can be preempted by the lower federal courts on the grounds of collateral estoppel for a prior state action by that concerned different defendants, state claims and was tainted by fraud an fraud on the courts.*

Ninth Circuit Court of Appeals
Statement 1

"The district court properly granted summary judgment on the claims of negligence per se and violation of 47 U.S.C. § 206. Those claims were litigated and decided in an earlier state court action brought by some of the plaintiffs here (with whom the remainder are in privity). See Jasso v. Cal. Dep't of Forestry, Superior Court of California, County of Lassen No. 41697; see also First Nat'l Bank v. Russell (In re Russell), 76 F.3d 242, 244-45 (9th Cir. 1996) (describing the elements of collateral estoppel under California law to be: (1) the issue decided in the earlier case is identical to the issue presented, (2) the earlier case culminated in a final judgment on the merits, and (3) the party against whom estoppel is asserted was a party to, or was in privity with a party to, the earlier case).
AFFIRMED. [App.Vol.1. Ex.3. pgs 4,¶3].

District Court Statement 7.

"Defendants' motion for summary judgment, grounded in collateral estoppel, should be granted. Plaintiffs have failed to demonstrate a genuine and material factual dispute as to the elements for application of collateral estoppel doctrine to these claims." [App.Vol.1. Ex.6. pg.36,¶3].
In response to the above statements, the Appellants argue the following.

District Court Statement 8

"C. UNDISPUTED AND DISPUTED FACTS

Defendants proffer 133 undisputed facts, of which plaintiffs agree upon only sixteen. These agreed-upon facts reveal very little about this case,7 and plaintiffs do not offer any others." [App.Vol.1. Ex.6. pgs.18-19].

It is true the plaintiffs disagreed with the any of the defendants undisputed Facts, that in the plaintiffs' opinion were disputable, due to the Fact being either incorrect, irrelevant, immaterial, heresay, or after the fact. They also gave the Court detailed reasons as to why they agreed or disputed each Fact. It is the Appellants' opinion, they did reveal ample information about the case as can be seen below by the just a sampling of some of the Facts.

Defendants Undisputed Fact No. 39.

"*The MPE limits outside the 30-300 Mhz. are less restrictive.*" [D.C.Dkt.No. 192. pg.12].

Plaintiffs answer to Fact No 39.

*"**DISPUTED** and **IRRELEVANT** in that defendants hold licenses and operate frequencies that are in excess of 300 Megahertz (Mhz.) [Ex. 31. pgs. 410-569]. And Plaintiffs OBJECT to the defendants use of lower frequencies that do not reflect the higher microwave, radio and cellular frequencies that are more than 300 Mhz. C.E.C. §350; RULE 402."* [D.C. Dkt.No. 192. pg.12].

Defendants Undisputed Fact No. 40.

"The reason for the more restrictive limits in this range are that the whole body absorption of RF energy by human beings is most efficient in that range; absorption is less efficient at other frequencies, so MPE limits are less restrictive." [D.C. Dkt.No. 192. pg.12].

Plaintiffs answer to Fact No 40.

DISPUTED *and Plaintiffs* ***OBJECT*** *as the statement is misleading as can be seen by the Tissue Dielectric Properties calculator found on the FCC website, the higher the frequency the absorption in certain body organs such as the brain, blood, bone marrow, etc. [Ex. 33, pgs. 743-752].* [D.C.Dkt.No. 192. pg.12].

Defendants Undisputed Fact No. 43.

"The MPE for cellular service is 580 m/W/cm2 (0.000580 W/cm2) and 1000 mW/cm2 for PCS (0.001 W/cm2)." [D.C.Dkt.No. 192. pg.13].

Plaintiffs answer to Fact No 43.

*"**UNDISPUTED** and veritable proof of the extremely high levels of RF radiation being emitted by defendants cellular services at Likely Mountain. According to the Narda website Calculator 580 mW/cm2 equals 1478.69604 V/m (Volts over meters) and 1000 mW/cm2 equals 1941.62303 V/m and pursuant to FCC regulations a maximum of 27.5 V/m is allowed for uncontrolled populations of which class the plaintiffs were at Likely Mountain. [Ex. 36. pgs. 762-767]."* [D.C.Dkt.No.192. pg.13].

Had the District Court considered any part of the defendants' claims in their Undisputed Fact number 43, it would have seen the defendants themselves, stated their cellular antennae emit radiation in excess of 1000 times that allowed by Law. That statement is most certainly a material fact that supports the plaintiffs' claims that the defendants' expert witnesses Richard Williams and Michael Ensminger had not taken into account all the radiation being emitted around the lookout tower.

Additionally, the plaintiffs submitted a Declaration made by Chairman Richard Tell of COMAR, the Institute of Electrical Engineers' (IEEE) Committee on Man and Radiation, declaring he had knowledge of Likely Mountain and explained that it takes high radiofrequency voltage to

cause radiation shocks and burns. [D.C.Dkt.No.191 Attach. #1]. [4] The IEE COMAR Committee is the same Committee that set the standards of human RF radiation exposure in the United States and the same Institute that can be found within the language of Title 47 C.F.R. §1.1310.

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[4] All the plaintiffs have complained about shocks and bruises in both the State and the Federal Court. They did not learn until talking to Chairman Tell in 2007, the shock and bruises were actually radiation burns.

> *"An issue of fact is "material" if, under the applicable substantive law, it might affect the outcome of the case. Allen v. Tyson Foods, 121 F.3d 642, 646 (11th Cir.1997) (citing Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986); Tipton v. Bergrohr GMBH-Siegen, 965 F.2d 994, 998 (11th Cir.1992)). An issue of fact is "genuine" if the record taken as a whole could lead a rational trier of fact to find for the nonmoving party. Id. A court must decide "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." Anderson, 477 U.S. at 251, 252, 106 S.Ct. 2505."* **Hickson Corp. v. Northern Crossarm Co., Inc..357 F.3d 1256, 1259 (11th Cir. 2004)**

> *"The rules of collateral estoppel have been addressed by our Supreme Court for at least 140 years. As recently reiterated by that court, "'Collateral estoppel precludes relitigation of issues argued and decided in prior proceedings.'" (Pacific Lumber Co. v. State Water Resources Control Bd. (2006) 37 Cal. 4th 921, 943 (Pacific Lumber), citing Lucido v. Superior Court (1990) 51 Cal.3d 335, 341.) Under*

Pacific Lumber, "[t]he doctrine applies 'only if several threshold requirements are fulfilled.'" (Pacific Lumber, supra, 37 Cal.4th at p. 943.) Inter alia, "'[f]irst, the issue sought to be precluded from relitigation must be identical to that decided in a former proceeding. Second, this issue must have been actually litigated in the former proceeding. Third, it must have been necessarily decided in the former proceeding.'" (Ibid., italics added.)
The party asserting collateral estoppel bears a "heavy" burden of proving all of these factors (Pacific Lumber, supra, 37 Cal.4th at p. 943) because, as explained by Justice Chin in People v. Garcia (2006) 39 Cal.4th 1070, 1092 (conc. & dis. opn. Chin, J.), citing a number of Supreme Court cases dating from as far back as the Civil War, "'the law does not favor estoppels.' . . . '[c]ertainty is an essential element of every estoppel . . . .' [Citation.] Thus, where a party asserts 'a certain question in issue has been litigated and determined between the same parties in a previous action, it is not enough that the proposed evidence tends to show that the precise question may have been involved in such litigation.' [Citation.] In other words, '"[e]very estoppel must be certain to every intent, and not to be taken by argument or inference." [Citation.] "If upon the face of a record anything is left to conjecture as to what was necessarily involved and decided, there is no estoppel in it when pleaded, and nothing conclusive in it when offered in evidence." [Citation.]'" (See also, People v. Frank (1865) 28 Cal.507, 517 ["a party cannot be precluded from giving evidence touching matters directly or collaterally involved in the issue upon the mere suspicion that they have already been determined against him by competent judicial authority; before that can be done it must appear

with certainty that such matters have been so determined" italics added]; Oakland v. Oakland Water Front Co. (1897) 118 Cal.160, 221 ["in the case of a judgment, unless this certainty appear upon the face of the record, the record of the judgment will not constitute an estoppel"].) **Kemp Bros. Construction, Inc. v. Titan Electric Corp. 146 Cal. App.4th. 1474 (2007)." [Appellants' Opposition Dkt. # 190. §41, pgs. 21-22].**

"The standards for granting summary judgment are well-established and exacting. A party is entitled to summary judgment only if it can show "that there is no genuine issue as to any material fact and that [it] is entitled to a judgment as a matter of law." Fed. R. Civ. Proc. 56(c). In reviewing a motion for summary judgment, a court must evaluate the evidence in the light most favorable to the party opposing the motion. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587-88 (1986). Summary judgment should not be granted "if the evidence is such that a reasonable jury could return a verdict for the non-moving party."Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). In short, when faced with a motion for summary judgment, the court must ask "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." Id. at 251-52." **[357 F. 3d 1256 - Hickson Corporation v. Northern Crossarm Co Inc. (2004)].**

"Extrinsic fraud is conduct which prevents a party from presenting his claim in court." Wood v. McEwen, 644 F.2d 797, 801 (9th Cir.1981). Under California law, extrinsic fraud is a basis for setting aside an earlier judgment. See Zamora v. Clayborn Contracting Group, Inc., 28 Cal.4th 249, 121

Cal.Rptr.2d 187, 47 P.3d 1056, 1063 (2002)."
Kougasian v. TMSL, Inc., 359 F.3d 1136 (9th Cir. 2004),

"Collateral estoppel should not apply when officers lie or fabricate evidence in state court proceedings."
McCutchen v. City of Monclair, 73 Cal. App 4th 1138, 1147 (1999)." [6]

[6] ***C.P.C. §118(a)*** *Every person who, having taken an oath that he or she will testify, declare, depose, or certify truly before any competent tribunal, officer, or person, in any of the cases in which the oath may by law of the State of California be administered, willfully and contrary to the oath, states as true any material matter which he or she knows to be false, and every person who testifies, declares, deposes, or certifies under penalty of perjury in any of the cases in which the testimony, declarations, depositions, or certification is permitted by law of the State of California under penalty of perjury and willfully states as true any material matter which he or she knows to be false, is guilty of perjury. This subdivision is applicable whether the statement, or the testimony, declaration, deposition, or certification is made or subscribed within or without the State of California."*
C.P.C. §134 *Every person guilty of preparing any false or antedated book, paper, record, instrument in writing, or other matter or thing, with intent to produce it, or allow it to be produced for any fraudulent or deceitful purpose, as genuine or true, upon any trial, proceeding, or inquiry whatever, authorized by law, is guilty of felony."*

Both the District Court and the Appellees/Defendants have claimed the federal courts have jurisdiction over the defendants and the plaintiffs, pursuant to the following case Law, collateral estoppel cannot be granted by the lower federal courts as the Appellants/Plaintiffs' federal claims of liability under Title 47 §206, §207 and Title 18 §1864, have never been litigated.

"This case is before us on appeal from the district court's dismissal of Eichman's lawsuit on the ground that Eichman's claims were barred by the res judicata effect of an earlier state suit. Because California preclusion law includes the requirement of prior jurisdictional competency, under Marrese v. American Academy of Orthopaedic Surgeons, ---

U.S. ----, 105 S.Ct. 1327, 84 L.Ed.2d 274 (1985), we find that Eichman is not precluded from bringing a federal action when the state court had no jurisdiction to hear Eichman's federal claims. We therefore reverse the district court's dismissal of Eichman's suit." ***Eichman v. Fotomat Corp., 147 Cal. App.3d 170, 197 Cal.Rptr. 612 (1983)."***

QUESTION 4: *Whether the lower federal courts were correct to dismiss plaintiffs Mary Jasso and Illa Garcia, on the grounds of collateral estoppel and privity, for a prior state action that the plaintiffs were barred by State Law from participating in.*

It needs to be noted that both plaintiffs Mary Jasso and Illa Garcia tried to sue the State defendants for Negligence Per Se and Ultrahazardous activities, but their complaints were dismissed the Superior Court on the grounds the Court lacked subject matter jurisdiction, as both women had worked for one of the State defendants at the time they suffered radiation exposure and injury at Likely Mountain and were estopped by State venue Law.

The Appellant Mary Jasso believes she falls under the protection of Title 47 of the United States Code at sections 206 and 207, states an injured party has a right to commence an action against any common carrier that causes them injury, for damages.[5] The First, Fifth, Seventh, and Fourteenth, Amendments, give Appellants the right to petition her Government for a redress of her grievances. A right to due process and equal protection of the Laws. The right to a jury trial and protection from the State or its employees, in violating or denying her due process and equal protection of the Laws, which are federal claims.

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[5] ***"Title 47 U.S.C. "§ 206. Carriers' liability for damages***

In case any common carrier shall do, or cause or permit to be done, any act, matter, or thing in this chapter prohibited or declared to be unlawful, or shall omit to do any act, matter, or thing in this chapter required to be done, such common carrier shall be liable to the person or persons injured thereby for the full amount of damages sustained in conse-quence of any such violation of the provisions of this chapter, together with a reasonable counsel or attorney's fee, to be fixed by the court in every case of recovery, which attorney's fee shall be taxed and collected as part of the costs in the case."

Title 47 U.S.C. § 207. Recovery of damages

Any person claiming to be damaged by any common carrier subject to the provisions of this chapter may either make complaint to the Commission as hereinafter provided for, or may bring suit for the recovery of the damages for which such common carrier may be liable under the provisions of this chapter, in any district court of the United States of competent jurisdiction; but such person shall not have the right to pursue both such remedies."

District Court Statement 8.

> *"Mary Jasso and Illa Garcia are also bound by the state court judgments based on their privity with the other plaintiffs. California courts apply the concept of privity where there is "a relationship between the party to be estopped and the unsuccessful party in the prior litigation which is 'sufficiently close' so as to justify application of the doctrine of collateral estoppel." Clemmer v. Hartford Ins. Co., 22 Cal.3d 865, 875 (1978) (citations omitted). "In the context of collateral estoppel, due process requires that the party to be estopped must have had an identity or community of interest with, and adequate representation by, the losing party in the first action as well as that the circumstances must have been such that the party to be estopped should reasonably have expected to be bound by the prior adjudication."17 Id."* [6]

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[6] The Appellees/Defendants judicially noticed several Court documents that either had been dismissed by the State Court, for lack of subject matter jurisdiction, or concerned the question of State Venue,

claiming to the District Court, that plaintiffs Mary Jasso and Illa Garcia had already litigated their civil claims in the state court. Those claims are not true. This Court, itself, in 2007, denied to review the question of State venue. (Case No. 07-604).

In defense Appellant Mary Jasso claims she falls under the protection of Eichman v. Fotomat Corp. (1983)(see pages 29 & 30, this document), and cannot be estopped in federal court from pursuing her federal claims against the defendants or her cause of action for strict liability for ultrahazardous activities, which has never been litigated in any court.

Also none of the following issues have been litigated in a state court.

In regards to plaintiffs Mary Jasso and Illa Garcia;

1. The defendants in this case and plaintiffs Mary Jasso and Illa Garcia, were not part of the prior state court summary judgment. It is both women's belief that if they are barred by the State Courts and they are barred by the Federal Courts from bringing suit under Congressional Act and statute, then their Constitutional rights have been breached by the very courts that have been appointed to protect their Constitutional rights.

In regards to all the federal plaintiffs;

2. Title 47 U.S.C. §206, §207, Negligence Per Se, and Ultrahazardous Activities, have never been litigated in State Court, whereas, common law tort of negligence per se and ultrahazardous activities were not allowed by State Law against State of California defendants, who can only be sued under the California Tort Claims act and Government Code.

3. The Appellees/defendants antennae radiation emissions were not part of the prior state case, considered, nor added to the radiation levels at issue in the prior state case.

4. The State defendants withheld evidence that was not litigated in the prior state action and had the

evidence been disclosed, it would have more probable than not, made a difference in the State court's ruling.

5. The State defendants allegedly, committed fraud and fraud on the State court to escape liability

6. The Federal defendants have come into the Federal District Court with the same alleged fraudulent documents and witnesses that the State defendants used to commit fraud on the State court, obstruct justice and strip the State plaintiffs' of their rights to due process and equal protection of the Laws.

7. The following statue was not litigated in the prior State court case; Title 29 C.F.R. §1910.268(a)(3)(c)(1)(p)(2)(3), requiring the posting of explicit warning signs, complete with phone number that is to be called before you enter the premises where microwave antennae are being used. Allegedly, neither the State or Federal defendants posted any such signs at Likely Mountain.

8. The safe distances for human occupation of the area around the defendants premises, that are required by the Federal Government.

It is Appellants belief that collateral estoppel does not apply to their circumstances or case.

QUESTION 5: *Whether a cause of action for ultra-hazardous activities can be dismissed by the lower federal courts, when the plaintiffs' injuries and the defendants' activities fall under the umbrella of strict liability for ultrahazardous liability pursuant to §460 of the Calfornia Civil Jury Instructions and past California case law.*

Ninth Circuit Statement Two

"The district court dismissed the plaintiffs' claim of strict liability based on ultrahazardous activity. By failing to raise any arguments in their opening brief addressing the district court's ruling on this claim,

the plaintiffs waived this challenge. See Smith v. Marsh, 194 F.3d 1045, 1052 (9th Cir. 1999)." [App.Vol.1, Ex.3. pg.4,¶2].

The Appellants will not speculate on why the Ninth Circuit Court of Appeals failed to acknowledge twelve of the plaintiffs and failed to read several pages of the Appellants Opening Brief. It is enough to say the Appellants argued or brought forth their cause of action for Ultrahazardous Activities on 10 pages of their Opening Brief. [9th Cir.Dkt.7].

Among the plaintiffs' arguments in their Opening Brief were the following claims.

> *"51. The essential elements of a claim for the doctrine of strict liability for ultrahazardous activities are: (1) The defendant carried on an ultrahazardous activity; (2) Such activity caused plaintiff to suffer injury, damage, loss or harm; and (3) The defendants recognized or should have recognized that plaintiff's person or property was likely to be harmed by the activity or the unpreventable miscarriage of the activity.* [9th Cir.Dkt.7. pg.8,¶3].
>
> ***"7. WHAT LAW SUPPORTS THESE ISSUES ON APPEAL? (YOU MAY BUT NEED NOT REFER TO CASE AND STATUES).*** [9th Cir. Dkt. No. 7. pg. 48].
>
> ***Title 47 USC §206 - 207.*** [9th Cir.Dkt.No. 7. pg.49].
>
> ***Title 18 USC §1864 (Hazardous or injurious devices on Federal lands)*** [9th Cir.Dkt. No.7. pg.49].
>
> ***47 U.S.C. §217.*** *In construing and enforcing the provisions of this chapter, the act, omission, or failure of any officer, agent, or other person acting for or employed by any common carrier or user, acting within the scope of his employment, shall in every case be also deemed to be the act, omission, or failure*

of such carrier or user as well as that of the person. [9th Cir.Dkt.No.7. pg.49].

47 U.S.C. §312(f). "Willful" and "repeated" defined

For purposes of this section:

(1) The term "willful", when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this chapter or any rule or regulation of the Commission authorized by this chapter or by a treaty ratified by the United States.

(2) The term "repeated", when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day. [9th Cir.Dkt.No. 7. pg.49].

Title 47 U.S.C. §414*. Nothing in this chapter contained shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this chapter are in addition to such remedies.* [9th Cir.Dkt. No.7.pg.49].

Strict Liability for Ultrahazardous Activities Doctrine (Rest-2d Torts. 4520)." [9th Cir.Dkt.No. 7. pg.52].

District Court Statement 9

"One can hardly dispute defendants' argument that cellular telephone use appears to be ubiquitous. Whether that conclusively defeats plaintiffs' ability to demonstrate that an activity meets the definition of "ultrahazardous" is another matter. While cellular telephones may be in common usage, those are not the devices at issue in this case. Rather, plaintiffs' claims center around the alleged dangers of cellular telecommunication transmission facilities, such as

the one located at Likely Mountain. Moreover, the legal issue of whether an activity is ultrahazardous is, in part, enough of a factual question that the California courts have held that it is not appropriately determined on a motion seeking dismisssal for failure to state a claim. Travelers Indem. Co. v. City of Redondo Beach, 28 Cal.App.4th 1432, 1444 (Cal. Ct. App. 1994) ("Due to the interplay of the various factors, it is impossible to define abnormally dangerous activities. The essential question is whether the risk created is so unusual, either because of its magnitude or because of the circumstances surrounding it, as to justify the imposition of strict liability from the harm that results from it, even though it is carried on with all reasonable care. . . Thus, by its very nature, the issue of whether an activity is ultrahazardous cannot be decided on demurrer.").[4]" Likewise, Rule 12(b)(6) is not a proper avenue for testing plaintiffs' evidence in this regard. Rather, the validity of plaintiffs' allegations of an ultrahazardous activity is properly tested under Rule 56 standards, whereby it may be determined if plaintiffs can offer the evidence necessary to prove the claim. See Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 252 (1986). Accordingly, the motion to dismiss on this ground must be denied. [D.C. Dkt. # 117, pgs. 6-7].

The Appellants injuries and the cause of their injuries, pursuant to the following case law, do meet the necessary elements to maintain a cause of action for strict liability for Ultrahazardous activities against the defendants as can be seen below.

"The doctrine of ultrahazardous activity provides that one who undertakes an ultrahazardous activity is liable to every person who is

*injured as a proximate result of that activity, regardless of the amount of care he uses." (Pierce v. Pacific Gas & Electric Co. (1985) 166 Cal.App.3d 68, 85 [212 Cal.Rptr. 283], internal citations omitted.)..." (Luthringer v. Moore (1948) 31 Cal.2d 489, 496 [190 P.2d 1].)***California Civil Jury Instructions (CACI) §460. Strict Liability for Ultrahazar dous Activities - Essential Factual Elements.* [App.Vol 1. Ex.8. pgs.39-42].

The Appellants/plaintiffs cause of action for strict liability for ultrahazardous activities has never been litigated in any court, be it State or Federal. The only evidence the defendants have brought forward to the District Court (Undisputed Fact No. 43) prove their antennae emits radiation more than one thousand times that allowed by Law and by any definition such activities are ultrahazardous.

STATEMENT OF RELATED CASE

Appellant Mary Jasso, has been dismissed from the District Court and the Ninth Circuit, (Case No. 09-15916). She is also appealing that case before this High Court. The case is against State of California Defendants for civil rights violations and injury on Federal Lands.

CONCLUSION

For all the above reasons, this Petition for a Writ of Certiorari should be granted to the Appellants by this Supreme Court.

"I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct.

Executed on October 25, 2010;

GILBERT TIFFEE DOROTHY M. TIFFEE

MARY A. JASSO